



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4153-4160; Dec. Dig. § 1050.* 1 Va.-W. Va. Enc. Dig. 592.]

3. Appeal and Error (§ 1050*)—Harmless Error.—A judgment otherwise proper should not be reversed for harmless error in the admission of evidence.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4153-4160; Dec. Dig. § 1050.* 1 Va.-W. Va. Enc. Dig. 592.]

4. Pleading (§ 380*)—Pleading to Sustain.—Evidence as to facts not stated under the grounds of defense filed by defendant is properly excluded.

[Ed. Note.—For other cases, see Pleading, Cent. Dig. §§ 1237-1252; Dec. Dig. § 380.* 5 Va.-W. Va. Enc. Dig. 299.]

5. Pleading (§ 258*)—Amendments During Trial—Plea.—While application during the trial to amend the statement of grounds of defense is addressed to the sound discretion of the court, the refusal of such an amendment was proper where the fact sought to be introduced, if it existed, must have been known to defendants from the beginning, and was omitted through their own fault.

[Ed. Note.—For other cases, see Pleading, Cent. Dig. §§ 765-782; Dec. Dig. § 258.* 1 Va.-W. Va. Enc. Dig. 318.]

6. Logs and Logging (§ 3*)—Sale of Standing Timber.—That a prior deed from plaintiff to a third party of the unmerchantable timber on the land was erroneously recorded as conveying the merchantable timber was no defense to an action to recover for merchantable timber subsequently sold defendants.

[Ed. Note.—For other cases, see Logs and Logging, Dec. Dig. § 3.* 13 Va.-W. Va. Enc. Dig. 219.]

Error to Circuit Court, Buchanan County.

Action by H. L. Lowe against the Hurricane Lumber Company and another. Judgment for plaintiff, and defendants bring error. Affirmed.

O. M. Litz and Greever & Gillespie, for plaintiffs in error.

Ayers & Smithdeal and Routh & Routh, for defendant in error.

McCOMB v. GILKESON et al.

Nov. 18, 1909.

[66 S. E. 77.]

1. Vendor and Purchaser (§ 65*)—Contracts of Hazard—Sale in Gross or by the Acre—Presumption.—As equity does not favor contracts of hazard, a sale is by the acre, where the quantity is referred to, and the language does not plainly indicate a sale in gross.

*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.

[Ed. Note.—For other cases, see Vendor and Purchaser, Cent. Dig. § 95; Dec. Dig. § 65.* 13 Va.-W. Va. Enc. Dig. 516.]

2. Vendor and Purchaser (§ 80*)—Contracts of Hazard—Presumption and Burden of Proof.—The presumption against contracts of hazard can be effectually repelled only by clear and cogent proof, and the burden is always on the party asserting such a contract to clearly establish it.

[Ed. Note.—For other cases, see Vendor and Purchaser, Cent. Dig. § 132; Dec. Dig. § 80.* 13 Va.-W. Va. Enc. Dig. 517.]

3. Vendor and Purchaser (§ 80*)—Contracts of Hazard—Presumption.—Where parties contract to pay a gross sum for a tract on the estimate of a given quantity, the presumption is that the quantity influenced the price, and that the agreement was not one of hazard.

[Ed. Note.—For other cases, see Vendor and Purchaser, Cent. Dig. § 132; Dec. Dig. § 80.* 13 Va.-W. Va. Enc. Dig. 517.]

4. Vendor and Purchaser (§ 65*)—Contracts of Hazard—Intention to Govern—Construction in Favor of Sale Per Acre.—Whether a contract be in gross or for a specific quantity depends on intention, to be gathered from its terms and all the facts and circumstances, but courts will always construe a contract to be for a sale per acre, where it does not clearly appear land was sold by the tract.

[Ed. Note.—For other cases, see Vendor and Purchaser, Cent. Dig. § 95; Dec. Dig. § 65.* 13 Va.-W. Va. Enc. Dig. 516.]

5. Vendor and Purchaser (§ 31*)—Deficiency in Quantity Sold—Substantial Loss Showing Mistake.—A deficiency of about 10 acres in a tract represented to contain $245\frac{1}{4}$ is not a small deficiency which the rule as to the meaning "more or less" in contracts of sale of land attributes to a variation of instruments, but a substantial loss, showing a mistake in estimating quantity.

[Ed. Note.—For other cases, see Vendor and Purchaser, Cent. Dig. § 36; Dec. Dig. § 31.* 13 Va.-W. Va. Enc. Dig. 527.]

6. Vendor and Purchaser (§ 177*)—Deficiency in Quantity Sold—Laches in Asserting Claim for Abatement of Price.—There was no laches on the part of a purchaser in asserting claim for abatement of the price because of a deficiency in quantity, where he did so promptly after discovering the shortage, and while a suit was still pending to have the sale ratified on behalf of infant owners, and all the parties were before the court, and a large part of the purchase money unpaid.

[Ed. Note.—For other cases, see Vendor and Purchaser, Cent. Dig. § 364; Dec. Dig. § 177.* 13 Va.-W. Va. Enc. Dig. 527.]

7. Infants (§ 41*)—Sale of Land—Mistake in Quantity—Right of Purchaser to Equitable Relief.—The principle on which equity gives relief in case of deficiency in quantity of land sold is that of mistake, and there is no reason why it should allow infants to profit by a mis-

*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.

take the court has made in their favor to the prejudice of an innocent purchaser any more than it would permit adults to take advantage thereof.

[Ed. Note.—For other cases, see Infants, Cent. Dig. § 92; Dec. Dig. § 41.* 13 Va.-W. Va. Enc. Dig. 529.]

8. Infants (§ 113*)—Binding Effect of Decree on Infant.—When the court acquires jurisdiction of the subject and person, an infant is as much bound by its decree as an adult.

[Ed. Note.—For other cases, see Infants, Cent. Dig. § 321; Dec. Dig. § 113.* 7 Va.-W. Va. Enc. Dig. 496.]

9. Vendor and Purchaser (§ 176*)—Deficiency in Quantity Sold—Measure of Damages.—In case of deficiency in quantity of land sold, the general rule of compensation or abatement is according to the average value per acre of the whole tract, unless particular circumstances require a departure therefrom.

[Ed. Note.—For other cases, see Vendor and Purchaser, Cent. Dig. §§ 333-337; Dec. Dig. § 176.* 13 Va.-W. Va. Enc. Dig. 537.]

Appeal from Circuit Court, Augusta County.

Suit by Henry McComb against Mary E. Gilkeson and others. From a decree for defendants, complainant appeals. Reversed.

Robertson & Robertson, for appellant.

Bumgardner & Bumgardner, for appellees.

D. S. COOK & SON MINING CO. *v.* THOMPSON.

Sept. 16, 1909.

[66 S. E. 79.]

1. Corporations (§ 670*)—Foreign Corporation—Attachment.—By provision of Code 1904, § 2959, merely showing defendant to be a foreign corporation, authorizes issuance of attachment.

[Ed. Note.—For other cases, see Corporations, Cent. Dig. §§ 2628-2639; Dec. Dig. § 670.* 2 Va.-W. Va. Enc. Dig. 77.]

2. Pleading (§ 48*)—Declaration—Sufficiency.—It is enough that a declaration sets out fully and clearly every fact necessary to apprise defendant of the nature of the demand, and to enable the court to say whether plaintiff would be entitled to recover on proof of such facts.

[Ed. Note.—For other cases, see Pleading, Cent. Dig. § 105; Dec. Dig. § 48.* 11 Va.-W. Va. Enc. Dig. 239.]

3. Evidence (§ 482*)—Opinion Evidence—Custom and Usage.—One of the grounds of negligence relied on being that defendant placed its dynamite thawer dangerously near its employees, the

*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.